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Supreme Court, U.S.
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No. 95-1680

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES,
Petitioner,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF THE INTER-AMERICAN DEVELOPMENT BANK AND THE PAN AMERICAN HEALTH ORGANIZATION/WORLD HEALTH ORGANIZATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF AMICI CURIAE

The Inter-American Development Bank ("IADB") and the Pan American Health Organization, Regional Office for the Western Hemisphere of the World Health Organization ("PAHO/WHO") are public international organizations. The IADB is an organization whose members are the governments of 46 countries, including the United States, and whose purpose is to contribute to the acceleration of the economic and social

development of its developing member countries, individually and collectively. PAHO/WHO, which has a membership consisting of 38 nations, including the United States, is a specialized agency of the United Nations dedicated to public health in the Western Hemisphere.

The property of both the IADB and PAHO/WHO, like the property of the General Secretariat of the Organization of American States ("OAS"), is immune from governmental confiscation by law. *Amici* desire to bring to the attention of the Court the adverse consequences for public international organizations other than the OAS of the ruling of the United States Court of Appeals for District of Columbia Circuit in this case.[1]

ARGUMENT

The Court of Appeals, in an action following an order of forfeiture by the United States of the assets of the Bank of Credit and Commerce International (Overseas) Limited ("BCCI") under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, upheld the denial of a claim by the OAS to a deposit it had made in a branch of BCCI. This decision raises a significant question of domestic and international law that merits review by this Court.

Like the OAS, the IADB and PAHO/WHO have been designated by the President as entitled to immunity under the International Organizations Immunities Act ("IOIA"), Pub. L. No. 79-291, 59 Stat. 669 (1945) (codified, as amended, in

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[1] The parties to this proceeding, the OAS, the United States of America, BCCI Holdings (Luxembourg), S.A., Bank of Credit and Commerce International (Luxembourg), S.A., Bank of Credit and Commerce International (Overseas) Limited, and International Credit and Investment Co. (Overseas) Limited, have consented to the submission of this brief. Their written consent is on file with the Court.

various sections of titles 22, 26, and 42 of U.S.C.). See 22 U.S.C.A. § 288 (WL Apr. 1996) (Historical and Statutory Notes). The IOIA explicitly grants each organization so designated, including the IADB, PAHO/WHO and the OAS, immunity from, *inter alia*, the "confiscation" of the organization's "property and assets." Specifically, the IOIA provides:

> Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless such immunity be expressly waived, and from confiscation.

22 U.S.C. § 288a(c).

In addition, the property of the IADB, like the property of the OAS, is protected from confiscation pursuant to an international agreement by which the signatory member states, including the United States, have bound themselves. Article XI, Section 4 of the Agreement Establishing the Inter-American Development Bank, Apr. 8, 1959, 10 U.S.T. 3068, 3095, 389 U.N.T.S. 69, explicitly provides:

> Property and assets of the Bank, wheresoever located and by whomsoever held, shall be considered public international property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

The immunities guarantees of the IOIA and the above-cited treaty are essential to the fulfillment of the functions that the member states have assigned to *amici*. Both *amici* maintain a significant portion of their assets in the form of deposits in commercial banks. The IADB disburses a portion of its multi-billion dollar loan portfolio to its borrowers

through commercial bank accounts. PAHO/WHO purchases over $65 million annually in medical equipment and public health supplies and systems, much of it by commercial bank checking. Absent full protection of these assets as intended by the international treaties by which *amici* were created and as reflected in the IOIA, *amici* cannot function with the independence required of a multi-governmental body. Indeed, the vulnerability of the bank accounts of *amici* and similar organizations to governmental confiscation or taking could adversely affect the functioning of all of the 70 international organizations designated by the President under the IOIA.

The erosion of international organization immunities by the United States may be expected to establish a precedent of persuasive consequence in chanceries and courts throughout the world. The United States is the single largest shareholder of the IADB. The United States provides the greatest contribution to the public health efforts of PAHO/WHO. The leading role of the United States in *amici* and the other international organizations of which it is a member makes the decision below of global significance.

CONCLUSION

This is an important case with international consequences. *Amici curiae* the IADB and PAHO/WHO respectfully request that the Court grant the Petition for Writ of Certiorari of the General Secretariat of the OAS.

Respectfully submitted,

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